IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

WP(C).No. 6849 of 2006(M)

PETITIONER:
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1. C.P. POCKER, MANAGER,
CPPHM HIGH SCHOOL, OZHUR, TIRUR,
MALAPPURAM DISTRICT.

2. M.T. AJITHA, HSA (HINDI),
CPPHM HIGH SCHOOL, OZHUR, TIRUR,
MALAPPURAM DISTRICT.

BY ADV. SMT.V.P.SEEMANDINI
SRI.M.R.ANISON
SMT.K.P.GEETHA MANI
SMT.LEKSHMY RAMANATHAN

RESPONDENTS:
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1. THE DEPUTY DIRECTOR OF EDUCATION
MALAPPURAM.

2. THE DISTRICT EDUCATIONAL OFFICER,
TIRUR.

BY GOVERNMENT PLEADER SRI.T.T.MUHAMMED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE JUDGMENT DATED 5-7-05 IN W.P.C.NO.26185/05**
EXT.P2	**TRUE COPY OF THE ORDER DATED 29-9-05 ISSUED BY R1**
EXT.P3	**TRUE COPY OF THE APPOINTMENT ORDER DATED 6-6-01 ISSUED BY THE SECOND RESPONDENT.**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No.6849 OF 2006

Dated this the 15th day of January 2007

JUDGMENT

Case of the petitioners in brief is as follows:

First petitioner is the manager of an Aided High School. Second petitioner was appointed in certain leave vacancies starting from 23-12-1999 and the last spell was till 12-01-2001. Thereafter second petitioner was appointed in the anticipated regular vacancy on 06-06-2001. It was rejected on the ground that it should be filled up by protected teachers. Petitioners approached this court by filing W.P.(C)No.26185/02. By Ext.P1 judgment this court disposed of the matter with certain directions. Pursuant to the same, Deputy Director passed Ext.P2. By Ext.P2, the appeal preferred by the manager to approve the appointment of the second petitioner from 08-08-2000 to 12-01-2001 and from 06-06-2001 was allowed. By Ext.P3, District Educational Officer approved the appointment of the second petitioner only from 16-07-2001 to 14-07-2003.

2. Reference is made to Ext.P2. Learned counsel for the petitioners pointed out that the matter is concluded by Ext.P2 order and that it is not open to the DEO to go against the same. Learned counsel submits that a perusal of Ext.P2 would show that the appeal of the manager was allowed and the DEO was directed to approve the appointment of the petitioners from 06-06-2001. Contrary to the same, DEO approved the appointed only with effect from 16-07-200, he submits. He submits that this is to subject the petitioner to the purview of the Government order, as per which petitioners will be deprived of financial benefits. Petitioner also seeks approval with effect from 16-07-03 and disburse salary also. Learned counsel gave the particulars of teachers (junior to petitioner) who are working by applying 1:40 ratio.

3. In the counter affidavit filed, it is inter-alia stated as follows:

> Appointment of the second petitioner was made with effect from 6-6-01 against the anticipated post of H.S.A. (Hindi) during 2001-2002. Generally, such posts are sanctioned with effect from July 15. If the manager had appointed the teacher with effect from the reopening date in anticipation of the post sanction, he should have preferred an appeal before the Director to

> get the post sanctioned with effect from the date of appointment. The appointment can be approved with effect from 06-06-2001 only if there is a sanctioned post. In the absence of sanctioned post the appointment can be approved only with effect from sanction mentioned in the staff fixation order. It is further stated that the ban on appointment is withdrawn and orders have been issued to approve the appointments made up to 29-10-2001 on the condition that the salary up to 31-03-2002 is to be credited to P.F. account. It is also stated that as per the request of the manager, Smt.Bindu.P.V. H.S.A. (Maths), Vineetha.S.R. (H.S.A. Maths), Manoj Kumar,H.S.A. (SS) and Vijayakumari.V., H.S.A. (SS) were retained applying 1: 40 ratio. But there is no mention by the Manager to retain the second petitioner applying 1:40 ratio.

4. Reply affidavit is also filed. I heard learned counsel for the petitioners and the learned Government Pleader also.

5. In Ext.P2, Deputy Director has categorically allowed the appeal of the manager and ordered approval provided appointment order is in order. There is no case that appointment order is not in order. There is no case that there is any 51A claimant or persons having preferential claim. I feel that as long as Ext.P2 order stands, it is not open to the subordinate officer to approve the appointment of the petitioner contrary to the directions contained in Ext.P2. Therefore, Ext.P3 to the extent that approval is only from 16-07-2001 is quashed

and partitioner will be entitled to approval from 06-06-2001 in the category of H.S.A. (Hindi). I make it clear that I am doing this on the basis of Ext.P2 order of the Deputy Director. This judgment will not stand in the way of the Government revising the matter under Rule 92. In which case, petitioner will not be entitled to the benefit of this judgment. I make it clear that if Ext.P2 is sought to be revised, it can be done only if the proceedings thereon are commenced within three months from today. There will be a direction to the AEO to re-consider the question whether applying 1:40 ratio second petitioner is entitled for approval from 16-07-2003. A decision shall be taken by the second respondent in accordance with law within a period of two months from the date of receipt of a copy of this judgment.

Writ petition is disposed of as above.

K.M.JOSEPH
JUDGE

sv.